

REMARKS

This is a response to the Notice of Non-Compliant Amendment (37 CFR 1.121) dated March 21, 2007 (the "Notice").

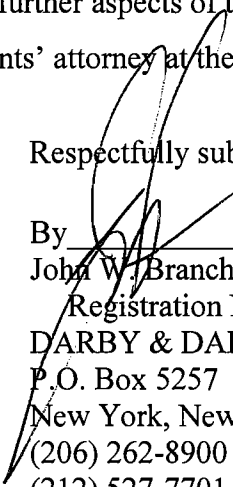
In the Notice, it was argued that a complete listing of all the claims was not present. Applicants believe that no claim listing was required in the amendment document as no claims were amended. Nevertheless, Applicants have provided a listing of the currently pending claims herein as a convenience.

It was further argued that no amendment (having Applicants' remarks/argument and claims) was included with the RCE filing. The filing of March 2, 2006 included PTO Form SB/30 with Box 1.a.ii. selected asking that the previously submitted Request for Reconsideration, filed on January 3, 2005, be entered. Nevertheless, Applicants have provided copies of the Request for Reconsideration and PTO Form SB/30 as a convenience.

This response has addressed fully all of the concerns expressed in the instant Notice of Non-Compliant Amendment and Applicants believe the pending claims are in condition for allowance. Early favorable action is urged. Should any further aspects of the application remain unresolved, Examiner is invited to telephone the Applicants' attorney at the number listed below.

Dated: April 23, 2007

Respectfully submitted,

By 
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Docket No.: 08204/100S025-US2/10.002C2
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Bryan D. Skene et al.

Application No.: 09/788,281

Confirmation No.: 5298

Filed: February 16, 2001

Art Unit: 2141

For: METHOD AND SYSTEM FOR BALANCING
LOAD DISTRIBUTION ON A WIDE AREA
NETWORK

Examiner: K. D. Shingles

**REQUEST FOR RECONSIDERATION AFTER
FINAL ACTION (37 C.F.R. SECTION 1.116)**

MS AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

INTRODUCTORY COMMENTS

In response to the Office Action dated November 2, 2005, finally rejecting claims 2-5, 8, 9, 17-26, 29, 33-41 and 45-50, please reconsider the above-identified U.S. patent application.

Remarks/Arguments begin on page 2 of this paper.

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Docket No.: 08204/100S025-US2

REMARKS

Claims 2-5, 8, 9, 17-26, 29, 33-41, and 45-50 are currently pending in the application. The Final Office Action mailed on November 2, 2005, has rejected all of the pending claims. No new matter has been added by this request for reconsideration.

Rejection Under 35 U.S.C. § 103(a)

Claims 2-5, 22-24, 39, 40 and 49 are rejected under 35 U.S.C. § 103 (a) as being unpatentable over Lim (U.S. Patent No. 6,360,256) in view of Swildens et al. (U.S. Publication No. 2005/0228856, hereinafter Swildens).

In regard to independent Claim 2, the Final Office Action found that Lim teaches every element except for determining whether to delegate delivery of the resources to a content delivery network. Instead, the Final Office Action relied upon Swildens to disclose delegating delivery of resources from distributed computer servers to a content delivery network, wherein the load of the servers are taken into account when selecting for hosting. Consequently, the Final Office Action found independent Claim 2 to be obvious in view of the suggested combination of Lim and Swildens.

However, after a review of the cited text in the Swildens reference, it appears that the Final Office Action has incorrectly read a meaning into this citation that does not exist. Swildens appears to generally disclose a distributed on demand computing system (DODC) that integrates load balancing and provisioning functions similar to a content delivery network (CDN) with distributed computing functions. (See Page 2, Paragraph 0023). In particular, Swildens appears to disclose enabling an administrator to select one or more servers in a CDN that can be configured to either participate or not in the DODC. (See Page 5, paragraph 0084). Swildens also appears to suggest that the number of servers employed for the DODC versus the CDN can be automatically adjusted according to a demand for each type of server, not based on a particular request for resources. (See Page 1, paragraph 0017).

In contrast, independent Claim 2 teaches determining whether to provide requested resources from either a selected server at a resolved IP address in a zone whose network conditions

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have been considered or delegating the delivery of the resources to a separate content delivery network that handles its own load balancing and provisioning functions of its servers. Clearly, nowhere in the Swildens reference is there a teaching or suggestion that in response to a request for resources, a determination is performed as to whether to delegate delivery of a requested resource to a content delivery network or provide the resources from a selected server.

It is well settled that a cited reference must be considered as a whole. Consequently, the Office Action can not just pick and choose particular elements from the Lim and Swildens references to find Claim 2 unpatentable. Thus, the suggested combination of Lim and Swildens does not make Claim 2 obvious, and it is now in condition for allowance.

Since independent Claims 22, 38, 49, and 50, are somewhat similar to independent Claim 2, these claims are also allowable for at least the same reasons.

Claims 8, 9, 17-21, 25, 26, 29, 33-38, 41, and 45-48 are rejected under 35 U.S.C. 1039a) as being unpatentable over Lim in view of Swildens, and further in view of Jindal et al. (U.S. Patent No. 6,092,178). Applicants respectfully disagree for at least the same reasons as the independent claims upon which these dependent claims depend, as discussed above. Thus, dependent Claims 8, 9, 17-21, 25, 26, 29, 33-38, 41, and 45-48 are patentable and allowable over the suggested combination of prior art references. Furthermore, dependent Claims 3-5, 23-24, and 40 are also patentable for at least the same reasons as the respective independent claims upon which they depend.

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CONCLUSION

By the foregoing explanations, Applicants believe that this response has addressed fully all of the concerns expressed in the Final Office Action, and believes that it has placed each of the pending claims in condition for immediate allowance. Should any further aspects of the application remain unresolved, the Examiner is invited to telephone Applicants' attorney at the number listed below.

Dated: January 3, 2006

Respectfully submitted,

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